Supreme Court, U.S.
FILED

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No. 97-3300

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

THERESA BATTLE, Pro Se

Petitioner,

v.

FLORIDA'S FIFTH DISTRICT
COURT OF APPEAL, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI.

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SUPREME COURT, U.S.

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New Port Richey, FL 34652
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24pp

QUESTIONS PRESENTED.

I. Constitutionality of disclaimer; "NOTWITHSTANDING CONSTITUTIONAL AND STATUTORY MANDATES" under United States Constitution Amendment 14.

II. Under what authority does a State Agency punish a person for doing what the law allows.

PARTNERS TO THE PROCEEDING

The Petitioner in this case is Theresa Battle United States citizen, who was Plaintiff in the District and Appellant before the United States Court of Appeals for the Eleventh Circuit.

The Respondents are Florida's Fifth Court of Appeals, Honorable Harris, Antoon and Peterson, presiding.

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MISCELLANEOUS:

Florida Case

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Florida Declaration of Rights Article 1 Section 21 4

The courts shall be open to every person for redress of any injury and justice shall be administered without sale, denial, or delay.

Florida Statute 454.18 ..... 3, 4

And any person, whether attorney or not, or whether within the exceptions mentioned above or not, may conduct his own cause in any court of this state, or before any public board committee, or officer, subject to the lawful rules and discipline of such court, board committee or officer.

Bernard M. SHOTKIN, Individually and as President of the Board of Trade, Inc., Appellant,

V.

Herman COHEN, Appellee.
No. 63-871.

District Court of Appeal of Florida.
Third District
April 7, 1964.
Rehearing Denied April 30, 1964.

An action wherein the plaintiff appealed from the Circuit Court for Dade County, Harold R. Vann, J. The District Court, Per Curiam, held that where layman against whom appellate court issued a rule to show cause why he should not be prohibited from representing himself or his corporations on appeal in propria persona filed return consisting of 16 pages of immaterial, irrelevant and impertinent matter, and failed to comply with any of rules of the appellate court, layman would be prohibited from representing himself or his corporations as appellant in any cases arising from trial courts of district wherein he or his corporations were plaintiffs, and cause would be dismissed unless such layman caused counsel to appear on his behalf.

Order in accordance with opinion.

1. Constitutional Law ⊕ 328

Notwithstanding constitutional and statutory mandates that courts be opened to all persons, when one person by his activities in a series of

cases upsets and interferes with normal procedures of court court will exercise restraint upon such person. F.S.A.Const. Declaration of Rights, § 4; F.S.A. § 454.18.

2. Attorney and Client ⇦ 62

Where layman against whom appellate court issued a rule to show cause why he should not be prohibited from representing himself or his corporations on appeal in propria persona filed return consisting of 16 pages of immaterial, irrelevant and impertinent matter, and failed to comply with any of rules of the appellate court, layman would be prohibited from representing himself or his corporations as appellant in any cases arising from trial courts of district wherein he or his corporations were plaintiffs, and cause would be dismissed unless such layman caused counsel to appear on his behalf. F.SA.Const. Declaration of Rights, § 4; F.S.A. § 454.1&

Bernard M. Shotkin, in pro. per.

Herman Cohen, Miami, in pro. per.

Before BARKDULL, C 3., and CARROLL and TILLMAN PEARSON, JJ.

PER CURIAM.

In the exercise of its inherent power to control and prevent abuse of court procedure and interference with the orderly progress of pending matters[1] this court did issue a rule to show cause directed to the appellant in this cause, which read as follows:

"RULE TO SHOW CAUSE

"BERNARD M. SHOTKIN has heretofore filed what purports to

be a Notice of Appeal in the trial court, a copy of which has been transferred to this court pursuant to Rule 3.2(a), Florida Appellate Rules, in which he attempts to seek review of an order entered in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, in a cause wherein he was the Plaintiff.

"It is apparent from the record in this case and from the records in: Shotkin V. Lowe [No. 57-401], Shot-kin v. Deehl [No.62-448], Shotkin V. Deehl [No. 63-78], and State ex rel. Shotkin V. Buchanan [No. 63-86], heretofore filed in this court, that the aforesaid BERNARD M. SHOTKIN either deliberately ignores the rules of procedure applicable to this court, or is unable to understand said Florida Appellate Rules. It is also apparent from the briefs and cases before this court, which are referred to above, that the aforesaid BERNARD M. SHOTKIN has and will continue to file pleadings which contain irrelevant and scandalous allegations, plus material which would subject a member of this bar to possible disciplinary action had he filed same before this court. The said activities on the part of the aforesaid BERNARD M. SHOTKIN are of such a nature as to constitute harassment, inconvenience and disruption of this court's calendar. It is therefore

"ORDERED AND ADJUDGED as follows:

"1. That the aforesaid BERNARD M. SHOTKIN shall show cause in writing, no later than the 2Oth day of March, 1964, why he should not be prohibited from henceforth representing himself or his corporation in this court in propria persona as appellant in this cause or as appellant in any cases arising from the trial courts of this district wherein he or his corporations were plaintiffs.

"2. That subsequent to the 20th day of March, 1964, this court will enter further orders concerning the disposition of this matter.

"3. Pending determination of this rule to show cause, all matters

relating to this appeal are hereby stayed."

Pursuant to the requirement of the rule, Bernard M. Shotkin timely filed what he styled "Appellant's Return to Rule to Show Cause and Complaint", consisting of 16 pages of immaterial, irrelevant and impertinent matter. Rather than demonstrating why this court should not prevent him from representing himself and his corporations in this forum, it was patent upon the face of the return that the said Bernard M. Shotkin [in presenting this, as in the presentation of other matters before this court referred to in the rule] has failed to comply with any of the rules of this court, and the said return, because of its rambling, incoherent, nonresponsive statements, and obvious lack of comprehension of the nature of the rules of procedure, amply demonstrates the reason for the issuance of the rule to show cause in the first instance.

[1, 2] Unfortunately, this is not the first time that Bernard M. Shotkin has interfered with the orderly process of judicial administration within not only this jurisdiction but in others. See: Shotkin V. Kaplan, 116 Col. 295, 180 P2d 1021. We recognize the constitutional mandate that the courts be open to all persons under § 4, Declaration of Rights, Constitution of the State of Florida, F.S.A., and the statutory provisions of § 454.18 Fla.Stat., F.S.A. However, when one person by his activities [not in just an isolated case but in a series of cases] upsets and interferes with the normal procedures of a court that will have approximately 1,000 matters filed before it this year, it becomes necessary to exercise restraint upon such person. This is so because the remainder of the litigants should not have their causes interfered with due to the unreasonable amount of time and effort which must be given in an attempt to make some intelligent understanding out of the voluminous so-called pleadings and briefs [filed by Bernard M. Shotkin], in order that as to them "justice shall be administered without * * * delay". It is therefore

Ordered and adjudged as follows:

1. The return to the rule being insufficient to show cause why the prohibitory features thereof should not be carried out, Bernard M. Shotkin is hereby prohibited from henceforth representing himself or his corporation in this court in propria persona as appellant in this cause or as appellant in any cases arising from the trial courts of this district wherein he or his corporations were plaintiffs.

2. That this cause will be dismissed within twenty (20) days unless the aforesaid Bernard M. Shotkin shall cause counsel to appear on his behalf in this matter, and further orders will be made setting up the time schedule for the filing of record, briefs, etc., in support of this appeal in the event of the appearance of counsel within the time set.

It is so ordered.

No. 98-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

THERESA BATTLE, Pro Se

Petitioner,

v.

FLORIDA'S FIFTH DISTRICT
COURT OF APPEAL, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI.

OPINIONS BELOW.

The District Court memorandum and order are reprinted as Appendix A at page 1a. The judgment of the Court of Appeals for the Eleventh District is reprinted as Appendix B at page 8a. The judgment of the Court of Appeals for the Eleventh District is reprinted as Appendix C page 8.

JURISDICTION.

The judgment of United States Court of Appeals for the Eleventh Circuit was initially entered in Case No: 97-3300, July 1, 1998 and was reentered September 1, 1998. The jurisdiction of this Curt is invoked under 42 USCS § 1983.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

42 USCS § 1983 provides:

> That a plaintiff may properly bring suit against a state for state officials violations of any rights incorporated in Federal Constitution's Amendment 14.

U.S.C.A. Constitutional Amendment 14 provides:

> NO state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny any person within it's jurisdiction equal protection of the law.

INTRODUCTION.

The Petitioner, Theresa Battle, U.S. Citizen residing in the State of Florida, appears before the Supreme Court of the United States, having been denied her 14th Amendment Rights of due process, equal protection through enforcement of a Florida Case law, SHOTKIN V. COHEN FL 163 So 2d 330 3DCA 1964 which embodies a disclaimer: "NOTWITHSTANDING Constitutional and Statutory mandates" abrogating the right of Access to the Court.

STATEMENT OF THE CASE.

In 1964, Florida's Court of Appeals perpetrated an act titled Shotkin v. Cohen whose sole purpose was to punish those persons seeking justice in Florida Courts under provision of F.S. 454.18, raising the question of Constitutionality under Amendment 14.

The question was brought before the United States District Court, Middle District of Florida, Orlando Division and was dismissed for immunity without addressing the question of Shotkin v. Cohen. The District Court erred.

REASON FOR GRANTING WRIT OF CERTIORARI

The reason to grant this writ of certiorari lies in the inherent right of all United States citizens to be assured of the integrity of their constitutional rights. Such assurance is guaranteed by the 14th Amendment of the United States Constitution under the provisions of 42 USCS § 1983 *Zinermon v. Burch* 494 US 113, 110 S Ct 975, 108 L Ed 2d 100.

In 1964 Florida's Third District Court of Appeals perpetrated an act, *Shotkin v. Cohen* in which the disclaimer NOTWITHSTANDING CONSTITUTIONAL AND STATUTORY MANDATES was incorporated, abrogating Article 1 Section 21 of Florida's Declaration of Rights Access to the Curt and Florida Statute 454.18 authorizing any person, attorney or no to serve as his own counsel in any court within the state.

In the process of evaluating *Shotkin v. Cohen* under the 14th Amendment, the Petitioner begs this Court to bear witness to the disclaimer and ask the question "under what due process may a person be punished for obeying the Law and on what else may a person rely for justice if not his legal rights?"

Bordenkircher v. Hayes 437 US 357, 97 S Ct 663
70 L Ed 2d 604.

Chaffin v. Stynchcombe 412 US 17, 93 S Ct 1977,
36 L Ed 2d 714

United States v. Goodwin 457 US 368, 102 S Ct
2485, 73 L Ed 2d 74

Free access to the court is a fundamental right essential to due process of law and cannot be made to yield to mere convenience.

Slaughter-House Case 16 Wall 36, 21 L Ed 394
Weaver v. Palmer Bros. Co. 270 US 402, 46 S Ct 320
70 L Ed 654.

Abrogation and denial of legal and constitutional rights, by a court, founded on inadequacies and differences of citizens, cloaked under the guise of compelling interest, and for which the court provides no remedy, is abuse of power and reaches far beyond the jurisdiction of the court and is invidious discrimination of the most basic sort.
Cooper v. Aaron 358 US 1, 78 S Ct 1401, 3 L Ed 2d 5
Civil Rights Cases 109 US 3, 3 S Ct 18, 72 L Ed 835
Morey v. Doud 354 US 457, 77 S Ct 1344, 1 L Ed 2d 93
Levy v. Louisiana 391 US 68, 88 S Ct 1509, 20 L Ed 2d 502

It will not be argued that the Florida Court was not cognizant of their actins, for *Shotkin v. Cohen* text contains substantial components to refute the claim.

Any state law whose constitutional status is questioned before a Federal Court, cannot be assumed. It must withstand rigorous examination and meet all criterion of the United States Supreme Court.

United States District Court, Middle District of Florida, Orlando Division was remiss in it's duty and obligation to "due process of law by ignoring the issue before it. *SHOTKIN V. COHEN.*

CONCLUSION

Given the nature, longevity and the deliberateness on the part of Florida's Court to continue to pursue this course of action, the Petitioner begs this Court to forgo granting this writ and declare *SHOTKIN V. COHEN* unconstitutional on all counts presented, enjoining Florida Courts to cease and desist.

Respectfully submitted,

THERESA BATTLE,
PRO SE
7116 MEGHAN COURT
New Port Richey, FL 34652
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APPENDIX TABLE OF CONTENTS.

District Court Memorandum and order 1a

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THERESA BATTLE,
Plaintiff

-vs- CASE NO. 97-948-CIV-ORL-22

FIFTH DISTRICT COURT
OF APPEAL, et at.,
Defendants

_____/

ORDER

This cause comes before the Court on Defendants' Motion to Dismiss (Dkt.9) filed September 3, 1997 and on Plaintiff's Motion to Deny Motion to Dismiss (Dkt.10) filed September 5, 1997.

On march 21, 1997, Defendant, the Fifth District Court of Appeal, through Defendants, Judge Earle W. Peterson, Jr., Judge Charles M. Harris and Judge John Antoon, II, issued a Mandate against Plaintiff, prohibiting her from appearing *pro se* before the appellate court to challenge her dissolution of marriage proceedings against her former husband. **In issuing its Mandate, the appellate court, relying on *Shotkin v. Cohen,* 163 So.2d 330 (Fla. 3d DCA 1964)**, made a determination that Plaintiff's past and ongoing litigation was frivolous and that Plantiff continued to appeal only matters which had already been adjudicated and for which no issues remained. The Florida Supreme Court denied review of the Fifth District Court of Appeal's Mandate.

Plaintiff has brought the instant action arguing Shotkin in unconstitutional. Plaintiff is seeking a restoration of all rights allegedly abridged by the Mandate, the placement of Case No. 96-03291-CA-D on the docket for the 18th Judicial Circuit, Florida and $250,000.

Defendants have moved to dismiss the suit, inter alia, on the basis of judicial immunity.

Judges are absolutely immune from civil liability for acts performed in their judicial capacity, provided such acts are not done in the clear absence of all jurisdiction. Roland V. Phillips, 19 F.3d 552, 555 (11th Cir. 1994); *Stump V. Sparkman, 435* U.S. 219 (1988). The Court finds that this action is barred by the doctrine of judicial immunity.

Further this action is subject to dismissal on the basis of the Rooker-Feldman doctrine. That doctrine precludes federal district courts from deciding "'federal issues that are "inextricably intertwined" with a state court's judgment.'" *Narey V. Dean,* 32 F.3d 1521, 1525 (11th Cir. 1994) (quoting *Liedel V. Juvenile Court of Madison County, Ala.,* 891 F.2d 1542,1545 (11th Cir. 1990)). "A federal suit is [inextricably] intertwined with [an] earlier state court judgment 'if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it[.]'" *Datz V. Kilgore,* 51 F.3d 252, 253-54 (11th Cir. 1995) (quoting *Pennzoil Co. v. Texaco, Inc.,* 481 U.S. 1, 25 (1987)).

Powell v. Powell, 80 F.3d 464, 467 (11th Cir. 1996), illustrates the breadth of the *Rooker-Feldman doctrine.* In that case, a state court awarded part of Powell's naval retirement pay to his ex-wife, pursuant to a federal statute. Thereafter, Powell sued his ex-wife and the Secretary of the Navy, contending that the federal statute was unconstitutional as applied because it effected an unconstitutional "taking" of his property. The Eleventh Circuit determined that the federal suit was barred by the *Rooker-Feldman* doctrine, stating:

> Mr. Powell's present federal claim that the [federal statute] is unconstitutional as applied to him is "inextricably intertwined" with the issue of whether the state court could award Mrs. Powell part of his naval

> retirement pay. If a federal district court were now to hold in Mr. Powell's favor on his federal claim, that holding would "effectively nullify" the state court's judgment that Mrs. Powell is to receive a portion of his naval retirement pay. *See Liedel V. Juvenile Court of Madison County,* 891 F.2d 1542, 1545 (11th Cir. 1990); *see also Stern V. Nix,* 840 F.2d 208, 211-12 (3rd Cir.), *cert. denied,* 488 U.S. 826, 109 S.Ct. 77, 102 L.Ed.2d 53 (1988) (holding that because district court holding would "effectively reverse the state court judgment," the federal claim was "inextricably intertwined" with the state court judgment). The result would be that the state court's judgment, insofar as it pertains to money to be received by Mrs. Powell, would be collaterally reviewed and reversed in federal court, which is precisely what the *Rooker-Feldman* doctrine exists to prevent.

Powell, 80 F.3d at 467.

Also instructive is *Datz v. Kilgore*, 51 F.3d 252 (11th Cir. 1995). Datz was prosecuted for a criminal offense in state court. During his trial, he moved to suppress the fruits of a search of his car, arguing a Fourth Amendment violation. Datz was convicted, and the conviction was affirmed. Prior to his criminal trial, Datz commenced a § 1983 suit against the police, contending that the car search violated the Fourth Amendment. Following Datz' conviction in state court, the district court ruled that the Rooker-Feldman doctrine barred Datz' federal claim. The district court reasoned that since "the state court held a hearing and fully considered the legality of the search," *Rooker-Feldman* precluded the federal court from reevaluating the issue. 51 F.3d at *253.* Accordingly, the district court dismissed the § 1983 suit for lack of jurisdiction.

The Court of Appeals for the Eleventh Circuit affirmed, reasoning as follows:

> The state court upheld the constitutionality of the pertinent search; so, plaintiff Datz cannot have success on the merits of his section 1983 claim unless the state court was wrong in its conclusion that the search was lawful. Here, the federal proceeding is inextricably intertwined with the state court judgment; and the federal suit is barred. Because the state court did squarely adjudicate the issue of the lawfulness of the search, Datz' section 1983 suit is nothing but a "prohibited appeal of the state court judgment." Pennzoil [Co. V. Texaco, Inc., 481 U.S. 1, 25, 107 S.Ct. 1519, 1533 (1987) (Marshall, J., concurring)]. *See also Narey* v. *Dean,* 32 F.3d 1521, 1524-25 (11th Cir. 1994).

Based on the reasoning of these cases, the Court determines that the Rooker-Feldman doctrine bars the instant action. This case is inextricably intertwined with the' state court's ruling. Were this Court now to consider Plaintiff's constitutional challenge, it would essentially be reviewing the state court's ruling.

Based on the foregoing, it is ordered as follows:

1. The Motion to Dismiss (Dkt.9) is GRANTED.

2. The Motion to Deny Motion to Dismiss (Dkt. 10) is DENIED.

3. This action is hereby DISMISSED WITH PREJUDICE.

4. The Clerk is directo to close the file.

DONE AND ORDERED in Chambers, Orlando, Florida, this 26th day of September, 1997.

ANN C. CONWAY
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 97-3300
Non-Argument Calendar
D. C. Docket No. 97-948-Civ-ORL-22

THERESA BATTLE,

Plaintiff-Appellant,

versus

FIFTH DISTRICT COURT OF APPEAL,
HONORABLE PETERSON, JR., Presiding
HONORABLE HARRIS, Presiding,
HONORABLE J.J. ANTOON, Presiding,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
(July 1, 1998)

Before ANDERSON and DUBINA, Circuit Judges, and FAY, Senior Circuit Judge.

PER CURIAM:

AFFIRMED. See 11th Cir. R. 36-1.[1]

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[1] 11th Cir. R. 36-1 provides:

When the court determines that any of the following circumstances exist:

(a) judgment of the district court is based on findings of fact that are not clearly erroneous;

(b) the evidence in support of a jury verdict is sufficient;
(c) the order of an administrative agency is supported by substantial evidence on the record as a whole;
(d) summary judgment, directed verdict, or judgment on the pleadings is supported by the record;
(e) judgment has been entered without a reversible error of law; and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

"Costs taxed against the plaintiff-appellant."

Entered: July 1, 1998
For the Court: Thomas K. Kahn, Clerk

By: _____
Deputy Clerk

ISSUED AS MANDATE: SEP. 10, 1998

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 97-3300

THERESA BATTLE,

Plaintiff-Appellant,

versus

FIFTH DISTRICT COURT OF APPEALS,
HONORABLE PETERSON, JR., Presiding
HONORABLE HARRIS, Presiding,
HONORABLE J.J. ANTOON, Presiding,

Defendants-Appellees.

On Appeal from the United States District Court for the
Middle District of Florida

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC
(Opinion_____, 11th Cir., 19___, ____F.2d_____).

Before: ANDERSON and DUBINA, Circuit Judges, and FAY, Senior Circuit Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in Regular active Service on the Curt having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

_____
UNITED STATES CIRCUIT JUDGE